

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Second )  
Amended Accusation Against: )**

**GARY BRUCE MARCUS, M.D. )**

**Case No. 12-2010-211534**

**Physician's and Surgeon's )  
Certificate No. C 28611 )**

**Respondent )  
\_\_\_\_\_ )**

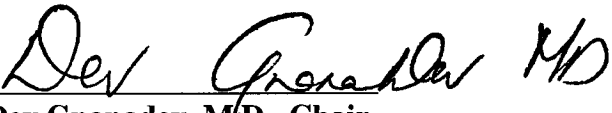
**DECISION**

**The attached Stipulated Settlement and Disciplinary Order for Public Reprimand is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on January 7, 2015.**

**IT IS SO ORDERED December 8, 2014.**

**MEDICAL BOARD OF CALIFORNIA**

By:   
Dev Gnanadev, M.D., Chair  
Panel B

1 KAMALA D. HARRIS  
Attorney General of California  
2 JOSE R. GUERRERO  
Supervising Deputy Attorney General  
3 EMILY L. BRINKMAN  
Deputy Attorney General  
4 State Bar No. 219400  
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5 San Francisco, CA 94102-7004  
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E-mail: Emily.Brinkman@doj.ca.gov  
7 *Attorneys for Complainant*

8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Second Amended  
12 Accusation Against:

13 **GARY BRUCE MARCUS, M.D.**  
14 1155 Woodside Road  
Berkeley, CA 94708

15 Physician's and Surgeon's Certificate No.  
16 C28611

17 Respondent.

Case No. 12-2010-211534

OAH Case No. 2013071065

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER FOR PUBLIC  
REPRIMAND**

18  
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Kimberly Kirchmeyer (Complainant) is the Interim Executive Director of the Medical  
23 Board of California. She brought this action solely in her official capacity and is represented in  
24 this matter by Kamala D. Harris, Attorney General of the State of California, by Emily L.  
25 Brinkman, Deputy Attorney General.

26 2. Respondent Gary Bruce Marcus, M.D. (Respondent) is represented in this proceeding  
27 by attorney David T. Shuey, Esq., whose address is: 1970 Broadway, Suite 1150, Oakland, CA  
28 94612

1           3.     On or about November 7, 1966, the Medical Board of California issued Physician's  
2 and Surgeon's Certificate No. C 28611 to Gary Bruce Marcus, M.D. (Respondent). The  
3 Physician's and Surgeon's Certificate is set to expire June 30, 2015, unless renewed.

4                                   JURISDICTION

5           4.     Accusation No. 12-2010-211534 was filed before the Medical Board of California  
6 (Board), Department of Consumer Affairs. The Accusation and all other statutorily required  
7 documents were properly served on Respondent on September 28, 2012. Respondent timely filed  
8 his Notice of Defense contesting the Accusation.

9           5.     The First Amended Accusation No. 12-2010-211534 was filed before the Board and  
10 was properly served on Respondent and his attorney of record on March 1, 2013.

11          6.     The Second Amended Accusation No. 12-2010-211534 was filed before the Board,  
12 and is currently pending. The Second Amended Accusation was properly served on Respondent  
13 and his attorney of record on March 21, 2014.

14          7.     A copy of Second Amended Accusation No. 12-2010-211534 is attached and  
15 incorporated herein by reference.

16                                   ADVISEMENT AND WAIVERS

17          8.     Respondent has carefully read, fully discussed with counsel, and understands the  
18 charges and allegations in the Second Amended Accusation No. 12-2010-211534. Respondent  
19 has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
20 Settlement and Disciplinary Order for Public Reprimand.

21          9.     Respondent is fully aware of his legal rights in this matter, including the right to a  
22 hearing on the charges and allegations in the Second Amended Accusation; the right to be  
23 represented by counsel at his own expense; the right to confront and cross-examine the witnesses  
24 against him; the right to present evidence and to testify on his own behalf; the right to the  
25 issuance of subpoenas to compel the attendance of witnesses and the production of documents;  
26 the right to reconsideration and court review of an adverse decision; and all other rights accorded  
27 by the California Administrative Procedure Act and other applicable laws.

10. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

11. Respondent admits the truth of each and every charge and allegation in Second Amended Accusation No. 12-2010-211534.

12. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order for Public Reprimand below.

## RESERVATION

13. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

## CONTINGENCY

14. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, Stipulated Settlement and Disciplinary Order for Public Reprimand shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

15. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order for Public Reprimand, including facsimile signatures thereto, shall have the same force and effect as the originals.

1           16. In consideration of the foregoing admissions and stipulations, the parties agree that  
2 the Board may, without further notice or formal proceeding, issue and enter the following  
3 Disciplinary Order for Public Reprimand:

4                                   **DISCIPLINARY ORDER**

5           1. **PUBLIC REPRIMAND.**

6           IT IS HEREBY ORDERED that Respondent Gary Bruce Marcus, M.D., Physician's and  
7 Surgeon's Certificate No. C 28611, shall be and hereby is publicly reprimanded pursuant to  
8 California Business and Professions Code section 2227, subdivision (a)(4). This public  
9 reprimand is issued in connection with Respondent's reading of an electrocardiogram report for  
10 one patient as set forth in the Second Amended Accusation No. 12-2010-211534.

11           2. **Clinical Training Program**

12           Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a  
13 clinical training or educational program equivalent to the Physician Assessment and Clinical  
14 Education Program (PACE) offered at the University of California - San Diego School of  
15 Medicine (Program). Respondent shall successfully complete the Program not later than six (6)  
16 months after Respondent's initial enrollment unless the Board or its designee agrees in writing to  
17 an extension of that time.

18           The Program shall consist of a Comprehensive Assessment program comprised of a two-  
19 day assessment of Respondent's physical and mental health; basic clinical and communication  
20 skills common to all clinicians; and medical knowledge, skill and judgment pertaining to  
21 Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum,  
22 a 40 hour program of clinical education in the area of practice in which Respondent was alleged  
23 to be deficient and which takes into account data obtained from the assessment, Decision(s),  
24 Accusation(s), and any other information that the Board or its designee deems relevant.  
25 Respondent shall pay all expenses associated with the clinical training program.

26           Based on Respondent's performance and test results in the assessment and clinical  
27 education, the Program will advise the Board or its designee of its recommendation(s) for the  
28 scope and length of any additional educational or clinical training, treatment for any medical

1 condition, treatment for any psychological condition, or anything else affecting Respondent's  
2 practice of medicine. Respondent shall comply with Program recommendations.

3 At the completion of any additional educational or clinical training, Respondent shall  
4 submit to and pass an examination. Determination as to whether Respondent successfully  
5 completed the examination or successfully completed the program is solely within the program's  
6 jurisdiction.

7 If Respondent fails to enroll, participate in, or successfully complete the clinical training  
8 program within the designated time period, Respondent shall receive a notification from the  
9 Board or its designee to cease the practice of medicine within three (3) calendar days after being  
10 so notified. Respondent shall not resume the practice of medicine until enrollment or  
11 participation in the outstanding portions of the clinical training program have been completed. If  
12 Respondent did not successfully complete the clinical training program, he shall not resume the  
13 practice of medicine until a final decision has been rendered on the accusation. Failure to enroll,  
14 participate in, or successfully complete the clinical training program within the designated time  
15 period shall constitute unprofessional conduct and grounds for further disciplinary action.

16 ACCEPTANCE

17 I have carefully read the above Stipulated Settlement and Disciplinary Order for Public  
18 Reprimand and have fully discussed it with my attorney, David T. Shuey, Esq.. I understand the  
19 stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this  
20 Stipulated Settlement and Disciplinary Order for Public Reprimand voluntarily, knowingly, and  
21 intelligently, and agree to be bound by the Decision and Order of the Medical Board of  
22 California.

23  
24  
25 DATED: 11/25/14

26 GARY BRUCE MARCUS, M.D.  
Respondent


27 ///

28 ///

1 I have read and fully discussed with Respondent Gary Bruce Marcus, M.D. the terms and  
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order  
3 for Public Reprimand. I approve its form and content.

4  
5  
6 DATED:

11/25/14

  
David T. Shuey, Esq.  
Attorney for Respondent

8 ENDORSEMENT

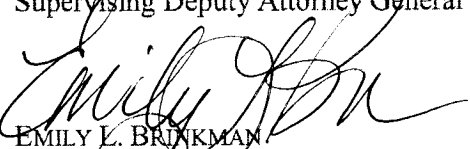
9 The foregoing Stipulated Settlement and Disciplinary Order for Public Reprimand is hereby  
10 respectfully submitted for consideration by the Medical Board of California of the Department of  
11 Consumer Affairs.

12 Dated:

12/1/2014

Respectfully submitted,

14 KAMALA D. HARRIS  
Attorney General of California  
15 JOSE R. GUERRERO  
Supervising Deputy Attorney General

16   
17 EMILY L. BRINKMAN  
18 Deputy Attorney General  
Attorneys for Complainant  
19 Medical Board of California

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**Exhibit A**

**Second Amended Accusation No. 12-2010-211534**



1 KAMALA D. HARRIS  
Attorney General of California  
2 JOSE R. GUERRERO  
Supervising Deputy Attorney General  
3 EMILY L. BRINKMAN  
Deputy Attorney General  
4 State Bar No. 219400  
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Telephone: (415) 703-5742  
6 Fax: (415) 703-5843  
E-mail: Emily.Brinkman@doj.ca.gov  
7 *Attorneys for Complainant*  
*Medical Board of California*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO MARCH 21, 2014  
BY: J. KELLY ANALYST

8 **BEFORE THE**  
9 **MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 **IN THE MATTER OF THE SECOND AMENDED**  
12 **ACCUSATION AGAINST:**

13 **GARY BRUCE MARCUS, M.D.**  
1155 Woodside Road  
14 Berkeley, CA 94708

15 **PHYSICIAN'S AND SURGEON'S**  
**CERTIFICATE No. C 28611**

16 Respondent.

Case No. 12-2010-211534

**SECOND AMENDED ACCUSATION**

17  
18 Complainant alleges:

19 1. Kimberly Kirchmeyer (Complainant) brings this Second Amended Accusation solely  
20 in her official capacity as the Executive Director of the Medical Board of California, Department  
21 of Consumer Affairs.

22 2. On November 7, 1966 the Medical Board of California issued Physician's and  
23 Surgeon's Certificate Number C 28611 to Gary Bruce Marcus, M.D. (Respondent). The  
24 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the  
25 charges brought herein and will expire on June 30, 2015, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

3. This Second Amended Accusation is brought before the Medical Board of California<sup>1</sup> (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked or suspended for a period not to exceed one year; or the licensee may be placed on probation; may be required to pay the costs of probation monitoring; or may have such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code provides that the Medical Board shall take action against any licensee who is charged with unprofessional conduct. Unprofessional conduct includes, but is not limited to:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter [Chapter 5, the Medical Practice Act]

“(b) Gross negligence.

“(d) Incompetence.”

6. Section 2266 provides that the failure to maintain adequate and accurate medical records constitutes unprofessional conduct.

7. Respondent is 75 years old and board certified in internal medicine and cardiovascular disease. The conduct alleged herein occurred while Respondent was working for East Bay Cardiology with hospital privileges at Doctors Medical Center of San Pablo. East Bay Cardiology provided cardiology services to Doctor's Medical Center.

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<sup>1</sup> The term “Board” means the Medical Board of California. “Division of Medical Quality” shall also refer to the Medical Board of California.

1 FIRST CAUSE FOR DISCIPLINE

2 (Gross negligence and/or Incompetence)

3 8. Respondent is subject to disciplinary action under sections 2234(b) [gross negligence]  
4 and/or (d) [lack of knowledge/incompetence] based on the following grounds.

5 9. On or about July 15, 2007, patient RH<sup>2</sup> (a 42 year old male) was taken by ambulance  
6 to the emergency room at Doctors Medical Center of San Pablo for chest pain. RH reported  
7 having left arm numbness, with chest pain on a scale of 6 out of 10. He had no prior history of  
8 heart disease, but his medical records indicate he reported that he had high blood pressure,  
9 smoked marijuana, and had similar episodes over the prior two weeks that included sweating,  
10 shortness of breath, and heart palpitations. Dr. Todd Mitchell, a hospitalist with Doctor's  
11 Medical Center, evaluated and admitted RH to the hospital in the telemetry unit for observation  
12 and a more complete medical work-up.

13 10. RH did well overnight and showed no evidence of myocardial necrosis (heart attack)  
14 with normal electrocardiography (ECG) and troponin blood levels (cardiac damage marker in the  
15 blood). The hospitalist ordered a stress exercise echocardiogram (also known as a stress test).

16 11. On or about July 16, 2007, a stress test was completed. Respondent was only asked  
17 to interpret the stress test and not to provide a cardiology consultation or evaluate RH.  
18 Respondent interpreted the stress test approximately three hours after the test. During the test  
19 RH showed good exercise tolerance, but he complained of chest pain. Medical staff present  
20 during the test stopped it before completion due to RH's complaint of fatigue. The test showed  
21 abnormal ECG's. Abnormal ECG's may suggest significant coronary artery disease. The stress  
22 test also showed frequent premature ventricular contraction (PVC's) and couplets [two in a row]  
23 in recovery, which is a possible marker for heart irritability from a blocked artery. There was  
24 also stress induced wall motion abnormality, which indicated that part of the heart was not  
25 getting enough blood flow due to a blocked coronary artery.

26  
27 <sup>2</sup> Patient initials will be used to protect the identity of the patient. Respondent can learn  
28 the name of the patient through the discovery process.

1           12.     Despite these conditions, Respondent reviewed the stress test, and accompanying  
2 stress test work sheet, and found that there was no evidence of a heart problem in RH.  
3 Respondent dictated the following notes in RH's medical record: "This exercise  
4 echocardiographic study reveals no evidence for myocardial ischemia. The patient did have  
5 chest discomfort and fatigue. Note that frequent premature ventricular contraction was noted as  
6 described above. Appropriate heart rate slowing did occur at one minute into recovery. The  
7 patient achieved 117% of the predicted exercise capacity for age." At approximately 6:08 p.m.,  
8 Respondent wrote the following notes in RH's medical record: "EXE [exercise] (-) [negative]  
9 for ischemia. Freq. PVC's in Recovery. Excellent exercise tolerance." Respondent determined  
10 that RH's stress test showed no heart problems or a blocked artery, when in fact there were  
11 obvious signs of a blocked artery.

12           13.     During the stress test, only an echocardiographic technician and nurse were present.

13           14.     Despite the normal stress test results received from Respondent, RH remained in the  
14 cardiac care unit overnight for continued monitoring. The medical records for RH indicate that  
15 he continued to complain to the nursing staff of chest pain and that he requested to speak with a  
16 doctor about the chest pain. Additionally, the medical records reflect that RH was afraid of  
17 being released from the hospital without knowing why he was having chest pain. On the "Plan  
18 of Care" form in RH's medical records the nursing staff wrote that RH's concerns were relayed  
19 to the hospitalist, Dr. Siddiqui, on July 17, 2007.

20           15.     On or about July 17, 2007 at approximately 2:00 p.m., Physician Assistant Michelle  
21 Canning made the following handwritten note in RH's medical record: "Stress test MNL [within  
22 normal limits], Lytes [electrolytes] OK. PVC's during stress test OK." Ms. Canning worked as  
23 a Physician Assistant for East Bay Cardiology.

24           16.     Dr. Siddiqui ordered a lung test (spirometry) for RH to determine if the chest pain  
25 was due to pulmonary issues. However, RH was discharged before the spirometry tests were  
26 available.

27           17.     RH was discharged from the hospital on July 17, 2007 with instructions to see his  
28 primary care provider.

1       18.    At no time did Respondent see the patient or review the medical chart from RH's  
2 admission date of July 16, 2007 at Doctors Hospital.

3       19.    On or about July 28, 2007, RH's medical records, including from the Contra Costa  
4 County Coroner's Office, indicate he was suffering from chest pains and called 911. RH was  
5 transported to the emergency room after suffering a heart attack. RH died in the emergency  
6 room of Doctors Medical Center. The subsequent autopsy listed the cause of death as "critical  
7 coronary artery stenosis due to coronary arterio and atherosclerosis." "Clinical history of  
8 hypertension" was also listed as another significant condition affecting the cause of death.

9       20.    Respondent was interviewed by investigators with the Board at the District Office in  
10 Pleasant Hill, California on February 28, 2012. During this interview, Respondent admitted to  
11 making a mistake in how he read RH's stress test results. He also admitted that he made a  
12 mistake in reading that there was no ischemia because it was in fact present. Finally,  
13 Respondent denied that he needs to change his practice of supervision during stress tests.

14       21.    Respondent committed unprofessional conducted amounting to gross negligence  
15 and/or demonstrated a lack of knowledge and skill in his care and treatment of Patient RH when  
16 he failed to identify an abnormality in RH's stress echocardiogram test results. This includes his  
17 failure to recognize several high risk indicators in RH's stress test and on the stress test work  
18 sheet. Specifically, the high risk indicators were: patient RH was a hospitalized patient in the  
19 cardiac care unit; a marijuana smoker; suffering from chest pain; chest pain of 4 out of 10 during  
20 the stress test; a family history of coronary artery disease; PVC and couplets after the test; and  
21 ECG changes during exercise and recovery period.

22       22.    Respondent's acts or omissions with respect to patient RH, whether jointly or  
23 separately or in any combination thereof, constitutes cause for disciplinary action under sections  
24 2234(b) [gross negligence] and/or (d) [incompetence] of the Code.

25                               SECOND CAUSE FOR DISCIPLINE

26                               (Failing to maintain adequate medical records)

27       23.    Respondent is subject to disciplinary action under section 2266 [failure to maintain  
28 adequate medical records] based on the following grounds:

24. The allegations from Paragraphs 8 through 22 above, are herein incorporated by reference abuse as fully set forth.

25. Respondent read and analyzed RH's stress test results and documented that there was no finding of heart disease and/or a blocked artery. Respondent also admitted that he incorrectly interpreted RH's stress test. RH's stress test showed that he did have heart disease and/or a blocked artery. Respondent's failure to accurately review, analyze, and document the results of RH's stress test constitutes a violation of section 2266 of the Code (failure to maintain adequate and accurate medical records). Therefore, cause for disciplinary action exists.

## PRA YER

Wherefore, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision.

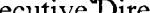
1. Revoking or suspending Physician's and Surgeon's Certificate Number C 28611 issued to Gary Bruce Marcus, M.D. and ordering Respondent to pay probation costs in the event he is placed on probation.

2. Revoking, suspending, or denying approval of Respondent's authority to supervise physician assistant's; and

3. Taking any other and further action as deemed necessary and proper.

March 21, 2014

Dated: \_\_\_\_\_

  
Kimberly Kirchmeyer  
Executive Director  
Medical Board of California

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40580682